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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION**

YENNA WU, Derivatively on Behalf of Nominal  
Defendant EXTREME NETWORKS, INC.

Plaintiff,

v.

GORDON L. STITT, HERB SCHNEIDER,  
STEPHEN HADDOCK, PAUL ROMEO, VITO  
PALERMO, HAROLD COVERT, DARRELL  
SCHERBARTH, CHRISTOPHER N. TODD,  
ALEXANDER J. GRAY, FRANK C. CARLUCCI,  
WILLIAM R. SLAKEY, CHARLES CARINALLI,  
HARRY SILVERGLIDE, MICHAEL WEST,  
KENNETH LEVY, ROBERT L. COREY, PETER  
WOLKEN, and PROMOD HAQUE,

Defendants,

and

EXTREME NETWORKS, INC.,

Nominal Defendant.

Case No. C 07-02268 RMW

**MEMORANDUM OF LAW IN  
FURTHER SUPPORT OF  
PLAINTIFFS YENNA WU  
AND LINDA ERIKSON'S  
MOTION TO CONSOLIDATE  
CASES AND TO APPOINT  
LEAD PLAINTIFFS AND  
LEAD COUNSEL, AND IN  
OPPOSITION TO THE  
MOTION OF FRANK A.  
GRUCEL, JR.**

Date: July 27, 2007  
Time: 9:00 a.m.  
Before: Hon. Ronald M. Whyte

MEMORANDUM OF LAW IN FURTHER SUPPORT OF PLAINTIFFS YENNA WU AND LINDA  
ERIKSON'S MOTION TO CONSOLIDATE CASES AND TO APPOINT LEAD PLAINTIFFS AND  
LEAD COUNSEL, AND IN OPPOSITION TO THE MOTION OF FRANK A. GRUCEL  
CASE NO. C 07-02268 RMW

LINDA ERIKSON, Derivatively on Behalf of  
Nominal Defendant EXTREME NETWORKS, INC.

) Case No. C 07-02388 RMW

) Plaintiff,

) v.

) GORDON L. STITT, HERB SCHNEIDER,  
) STEPHEN HADDOCK, PAUL ROMEO, VITO  
) PALERMO, HAROLD COVERT, DARRELL  
) SCHERBARTH, CHRISTOPHER N. TODD,  
) ALEXANDER J. GRAY, FRANK C. CARLUCCI,  
) WILLIAM R. SLAKEY, CHARLES CARINALLI,  
) HARRY SILVERGLIDE, MICHAEL WEST,  
) KENNETH LEVY, ROBERT L. COREY, PETER  
) WOLKEN, and PROMOD HAQUE,

) Defendants,

) and

) EXTREME NETWORKS, INC.,

) Nominal Defendant.

) FRANK A. GRUCEL, JR., Derivatively on Behalf of  
) Nominal Defendant EXTREME NETWORKS, INC.

) Case No. C 07-02848 RMW

) Plaintiff,

) v.

) GORDON L. STITT, MICHAEL WEST, WILLIAM  
) R. SLAKEY, MICHAEL J. PALU, ALEXANDER J.  
) GRAY, HERB SCHNEIDER, FRANK C.  
) CARLUCCI, STEVEN HADDOCK, ALICIA  
) JAYNE MOORE, HARRY SILVERGLIDE,  
) ROBERT L. COREY, KENNETH LEVY,  
) CHARLES P. CARINALLI, and PETER WOLKEN,

) Defendants,

) and

) EXTREME NETWORKS, INC.,

) Nominal Defendant.

MEMORANDUM OF LAW IN FURTHER SUPPORT OF PLAINTIFFS YENNA WU AND LINDA  
ERIKSON'S MOTION TO CONSOLIDATE CASES AND TO APPOINT LEAD PLAINTIFFS AND  
LEAD COUNSEL, AND IN OPPOSITION TO THE MOTION OF FRANK A. GRUCEL  
CASE NO C 07-02268 RMW

Derivative plaintiffs Yenna Wu and Linda Erikson respectfully submit this memorandum of law in further support of their motion to consolidate the related actions, appoint themselves as Lead Plaintiffs and approve their selection of Lead Counsel, and in opposition to the motion filed by plaintiff Frank A. Grucel, Jr. for his appointment as Lead Plaintiff and appointment of Lerach Coughlin Stoia Geller Rudman & Robbins as Lead Counsel.<sup>1</sup>

## MEMORANDUM OF POINTS AND AUTHORITIES

### **I. INTRODUCTION**

A plaintiff who leads a shareholder's derivative suit occupies a position "of a fiduciary character," in which "[t]he interests of all in the redress of the wrongs are taken into his hands, dependent upon his diligence, wisdom and integrity." *Cohen v. Beneficial Loan Corp.*, 337 U.S. 541 (1949). Thus, "[p]ursuant to Fed. R. Civ. P. 23.1, a plaintiff bringing a derivative shareholder action must be qualified to serve in a fiduciary capacity as a representative of the class of stockholders, whose interest is dependent upon the representative's adequate and fair prosecution of the action." *Bender v. Parks*, 2004 U.S. Dist. LEXIS 17090, at \*11 (D.D.C. Jan. 15, 2004) (citation omitted); see *Larson v. Dumke*, 900 F.2d 1363, 1367 (9th Cir. 1990) (discussing qualities necessary to satisfy adequacy of a proposed derivative plaintiff). Currently, there are two motions pending filed by: (1) plaintiffs Yenna Wu ("Ms. Wu") and Linda Erikson ("Ms. Erikson"), who request their appointment as Lead Plaintiffs and the appointment of their selection of the law firm of Schiffrin Barroway Topaz & Kessler, LLP ("Schiffrin Barroway") as Lead Counsel; and (2) plaintiff Frank A. Grucel, Jr. ("Mr. Grucel"), who requests his appointment as Lead Plaintiff and the appointment of Lerach Coughlin Stoia Geller Rudman & Robbins LLP ("Lerach Coughlin") as Lead Counsel.

Here, for the reasons stated herein, of the competing lead plaintiff movants, Ms. Wu and Ms. Erikson are most capable of "act[ing] in the stead of the corporation, as a corporate surrogate

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<sup>1</sup> All movants agree that consolidation of these actions is proper, thus, that aspect of the competing motions is unopposed.

1 seeking vindication of a corporate right” as they will ensure that Defendants are held accountable  
 2 for their improper options backdating scheme. *Sweet v. Bermingham*, 65 F.R.D. 551, 553  
 3 (S.D.N.Y. 1975). In the alternative, should this Court deem it appropriate, Ms. Wu and Ms.  
 4 Erikson should be appointed as Co-Lead Plaintiffs with the other competing Lead Plaintiff  
 5 movant and their counsel, Schiffrin Barroway should be appointed as Co-Lead Counsel with  
 6 Lerach Coughlin.<sup>2</sup>

## 7 **II. MS. WU AND MS. ERIKSON SHOULD BE APPOINTED AS LEAD** 8 **PLAINTIFFS**

9 In considering the appointment of a lead plaintiff in a shareholder derivative action,  
 10 courts readily assess which movant will adequately serve the interests of the derivative plaintiffs  
 11 and the nominal defendant. *Millman v. Brinkley*, 2004 U.S. Dist. LEXIS 20113, \*8 (N.D. Ga.  
 12 Oct. 1, 2004). The various factors that courts consider include: (1) the quality of the pleadings;  
 13 (2) the vigorousness of the prosecution of the lawsuits; and (3) whether plaintiffs are represented  
 14 by capable counsel. *Millman*, 2004 U.S. Dist. LEXIS 20113, at \*9-11; *Dollens v. Zions*, 2001  
 15 U.S. Dist. LEXIS 19966, \*13-19 (N.D. Ill. Dec. 4, 2001). An evaluation of these factors  
 16 supports the appointment of Ms. Wu and Ms. Erikson as Lead Plaintiffs.

17 Here, plaintiffs Ms. Wu and Ms. Erikson each filed complaints on behalf of Extreme  
 18 Networks, Inc. (“Extreme” or the “Company”) within one week of each other. In an effort to  
 19 vigorously prosecute the actions, plaintiffs Ms. Wu and Ms. Erikson, together with Defendants,  
 20 filed a stipulation consolidating the related actions, appointing Ms. Wu and Ms. Erikson as Lead  
 21 Plaintiffs and their counsel, Schiffrin Barroway, as Lead Counsel and setting a schedule for the  
 22 filing of a consolidated complaint and a subsequent briefing schedule on May 22, 2007. More  
 23 than a month after Ms. Wu initially filed her complaint, and after plaintiffs Ms. Wu and Ms.  
 24

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25 <sup>2</sup> As explained in Ms. Wu’s and Ms. Erikson’s letter filed with the Court on July 12,  
 26 2007, it would serve the interests of judicial economy and all Plaintiffs to hold a single hearing  
 27 to determine the appointment of lead counsel and lead plaintiff in these actions. Mr. Grucel’s  
 28 recent suggestion in his Statement of Non-Opposition that Ms. Wu and Ms. Erikson are engaging  
 in “gameplaying” is unfounded.

1 Erikson had entered into a stipulation with Defendants, plaintiff Mr. Grucel filed a complaint on  
2 May 31, 2007 on behalf of Extreme. Each of the complaints seek to remedy defendants'  
3 breaches of fiduciary duty, unjust enrichment, statutory violations, and other violations of law  
4 arising out of defendants' conduct of authorizing the backdating of stock option grants to  
5 Extreme's top executives at the expense of Sonic and its shareholders. However, in addition to  
6 the foregoing, Ms. Wu's amended complaint filed on June 15, 2007 also includes a unique  
7 allegation pursuant to Delaware General Corporations Law for the Company's Board of  
8 Directors' failure to hold a statutorily required shareholder meeting within the requisite time  
9 period – an allegation not found in Mr. Grucel's complaint.<sup>3</sup> The inclusion of this additional  
10 valuable claim not only demonstrates that the complaints filed by Ms. Wu and Ms. Erikson are  
11 superior to those of the competing movant but also demonstrates Ms. Wu's and Ms. Erikson's  
12 dedication to vigorously prosecute defendants for *all* violations of law which have caused injury  
13 to Extreme and its shareholders. Further, Ms. Wu and Ms. Erikson, through their counsel,  
14 Schiffrin Barroway, have also hired a forensic investigator to assist in litigation strategy. Thus,  
15 for all the foregoing reasons, Ms. Wu and Ms. Erikson should be appointed as Lead Plaintiffs.  
16

### 17 **III. THE COURT SHOULD APPOINT SCHIFFRIN BARROWAY AS** 18 **LEAD COUNSEL**

19 In selecting Lead Counsel, the "guiding principle" is who will "best serve the interest of  
20 the plaintiffs." *Millman*, 2004 U.S. Dist. LEXIS 20113 at \* 9. Here, Schiffrin Barroway will  
21 best serve the interests of all plaintiffs. As fully set forth in Ms. Wu's and Ms. Erikson's  
22 opening memorandum, Schiffrin Barroway has a long and proven track record of successfully  
23 prosecuting complex shareholder actions, like this one, in both state and federal courts across the  
24 country, including serving in a leadership capacity in a numerous derivative cases in the State of  
25 California. Moreover, Schiffrin Barroway is one of the leading law firms which has specialized  
26 in prosecuting claims relating to options backdating, seeking not only to hold the directors and

27 <sup>3</sup> Since Ms. Wu filed her amended complaint, the Company has noticed an annual  
28 shareholder meeting for July 30, 2007.

officers responsible for their past misconduct but also to ensure that proper corporate reform is instituted so that these practices are finally eliminated. In light of their extensive record of success in shareholder litigation, their expertise in options backdating litigation, and their vigorous, high-quality prosecution of this action, the Court should appoint Schiffrin Barroway as Lead Counsel. In the alternative, Schiffrin Barroway and Lerach Coughlin should be appointed as Co-Lead Counsel as both firms have demonstrated an ability to work efficiently together in a number of similar cases based upon defendants' backdating of stock options.<sup>4</sup> Further, considering Schiffrin Barroway and Lerach Coughlin are harmoniously serving as co-lead counsel in these numerous backdating cases, Mr. Grucel's implication in his Statement of Non-Opposition that Schiffrin Barroway would fail to represent the interests of the Company is not only odd but patently untrue.

#### IV. THE COURT SHOULD APPOINT SCHIFFRIN BARROWAY AS LEAD COUNSEL

For the foregoing reasons, plaintiffs Ms. Wu and Ms. Erikson submit that they should be appointed as lead plaintiffs, and their counsel should be appointed as lead counsel. In the alternative, despite having filed this litigation first and despite the superiority of their complaints, plaintiffs Ms. Wu and Ms. Erikson suggest that they would be willing to serve as co-lead plaintiffs with Mr. Grucel, and their counsel would serve as co-lead counsel with the Lerach Coughlin firm.

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<sup>4</sup> See, e.g. *In re Ditech Networks, Inc., Derivative Litigation*, Master File No. C 06-06-05157 JF (N.D. Cal. Nov. 29, 2006) (order appointing Schiffrin Barroway and Lerach Coughlin as Co-Lead Counsel in derivative options backdating litigation)(Albert Decl. at Exhibit A); *Dossett v. Cline, et al.*, Master File No. 5:06-cv-03484 JF (N.D. Cal. July 13, 2006) (same) (Albert Decl. at Exhibit B); *Chu v. Hughes, et al.*, Master File No. C 06-3513 JF MHP (N.D. Cal. Aug. 10, 2006) (same) (Albert Decl. at Exhibit C); *Hergotz v. Sola, et al.*, Master File No. C 06-3783 JF (N.D. Cal. Aug. 31, 2006) (same) (Albert Decl. at Exhibit D); *Kalindjian v. Antle, et al.*, Master File No. C 06-3440 JF (N.D. Cal. Sept. 6, 2006) (same) (Albert Decl. at Exhibit E).



1 Dated: July 18, 2007

Respectfully Submitted,

2 **SCHIFFRIN BARROWAY**  
3 **TOPAZ & KESSLER, LLP**

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